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10 in her capacity as trustee for the  
11 related estate of Thomas A. Pishos

12 **UNITED STATES BANKRUPTCY COURT**  
13 **EASTERN DISTRICT OF CALIFORNIA**  
14 **SACRAMENTO DIVISION**

15 In re:

16 **BONNIE BREKKE PISHOS,**

17 Debtor.

Case No. 11-40062-B-7  
Chapter 7

DCN: DNL-2

Date: November 22, 2011  
Time: 9:32 a.m.  
Place: Courtroom 32, Dept. B  
501 I Street, 7<sup>th</sup> Floor  
Sacramento, CA 95814

18 **MOTION FOR EXCUSE FROM TURNOVER**

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20  
21 SUSAN K. SMITH ("Thomas Trustee"), in her capacity as trustee for the related bankruptcy  
22 estate of THOMAS A. PISHOS ("Thomas Pishos"), hereby moves for an order: (a) excusing KEVIN  
23 SMITH ("Receiver") from compliance with subsections (a), (b), and (c) of 11 U.S.C. Section 543;  
24 and (b) vacating the automatic stay provisions of 11 U.S.C. Section 362 so as to allow Receiver to  
25 proceed with all rights and remedies against the real property commonly known as 7756 Arcari Trail,  
26 Grayling, Michigan 49738 ("Hunting Lodge"), including but not limited to taking possession of the  
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1 Hunting Lodge, collecting rents there from, and permitting Receiver to foreclose under applicable  
2 non-bankruptcy law. In support thereof, it is represented that:

3 1. Thomas Pishos' parent bankruptcy case, #06-21891-A-7, was commenced by the  
4 filing of a voluntary Chapter 7 petition on June 2, 2006.  
5

6 2. Thomas Trustee is the duly appointed successor trustee for Thomas Pishos'  
7 bankruptcy estate.

8 3. Adversary Proceeding #08-02023-A is an adversary proceeding in which BONNIE  
9 PISHOS ("Bonnie Pishos") is the sole remaining defendant on Thomas Trustee's claims for turnover,  
10 avoidance of preferences and avoidance of fraudulent transfers. In that adversary proceeding,  
11 Thomas Trustee seeks to set aside a marital property settlement and related transfers of property,  
12 including notes secured by a junior mortgage against the Hunting Lodge.  
13

14 4. On March 20, 2008, Judge McManus authorized the issuance of a writ of attachment  
15 that was perfected by the United States Marshals Office, Eastern District of Michigan, Detroit  
16 Division, against the subject property pursuant to California Civil Code Section 3439.01(a)(2).  
17

18 5. On March 10, 2009, Judge McManus appointed Receiver as receiver to take charge  
19 of the notes. In a related adversary proceeding, the Receiver obtained a money judgment against the  
20 guarantor of the notes. The Receiver, who is a Michigan bankruptcy attorney, has advised that he  
21 has recovered about \$23,000 and that the balance due on the notes is about \$384,000.  
22

23 6. The Receiver has also advised that: (a) the senior lender has commenced foreclosure  
24 proceedings against the Hunting Lodge; and (b) in order to protect the notes, foreclosure proceedings  
25 should be commenced on the junior mortgage as soon as possible.

26 7. On Wednesday, August 17, 2011, Bonnie Pishos filed a voluntary Chapter 7 petition  
27 of her own, commencing the above-captioned case. The schedules disclose 7 creditors owed a total  
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1 of about \$904,000, of which \$748,000 is owed to Thomas Trustee. The schedules list no interest in  
2 the notes, but do list and claim exempt the approximate \$23,000 note proceeds held by the Receiver.  
3 The petition estimates that, after any exempt property is excluded and administrative expenses are  
4 paid, there will be no funds available for distribution to creditors.  
5

6 8. IRMA EDMONDS (“Bonnie Trustee”) is the duly appointed Chapter 7 trustee for  
7 Bonnie Pishos’ bankruptcy estate.

8 9. 11 U.S.C. Section 543(d) provides that after notice and a hearing, this Court may  
9 excuse the Receiver if the interests of the creditors would be better served by permitting the Receiver  
10 to continue in possession, custody, or control of the notes. Judge McManus appointed the Receiver  
11 to protect Thomas Trustee’s substantial interest in the notes, the subject of a long-pending fraudulent  
12 transfer adversary proceeding. Thomas Trustee’s \$748,000 claim is secured by a writ of attachment  
13 against notes with a current balance due of about \$384,000, subject to outstanding professional fees  
14 and expenses of the receivership. As a Michigan bankruptcy attorney, the Receiver has the expertise,  
15 contacts and proximity to expediently and cost-effectively protect the interests of all creditors.  
16  
17 Otherwise, it is likely that time will be lost and expense will be duplicated.  
18

19 9. 11 U.S.C. Section 362(d) authorizes this court to grant relief from the automatic stay  
20 for cause, including lack of adequate protection of an interest in property of such party in interest.  
21 The notes are secured by a junior mortgage that is in danger of being wiped out by the senior lender.  
22 Cause exists to modify the automatic stay, including subdivisions (a)(1) and (a)(3) of 11 U.S.C.  
23 Section 362, so that the Receiver can proceed with all rights and remedies against the Hunting  
24 Lodge, including taking possession of the Hunting Lodge, collecting rents there from, and permitting  
25 Receiver to foreclose under applicable non-bankruptcy law.  
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1           **WHEREFORE**, Thomas Trustee prays for the entry of an order consistent with the  
2 foregoing and further relief as is necessary and proper.

3 Dated: October 14, 2011

**DESMOND, NOLAN, LIVAICH & CUNNINGHAM**

By: \_\_\_\_\_

**J. RUSSELL CUNNINGHAM**

Attorneys for Susan K. Smith, in her capacity as  
trustee for the estate of Thomas A. Pishos